

ORIGINAL

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE)
VIOLATION OF CHAPTER 8,)
TITLE 40, UCA, 1953, and)
RULES MC-700 and M-3 of) CAUSE NO. ACT/015/025
the BOARD OF OIL, GAS AND)
MINING BY CO-OP MINING)
COMPANY, BEAR CREEK CANYON)
PORTAL, EMERY COUNTY, UTAH.)

BE IT REMEMBERED that on the 26th day
of June, 1979, a hearing was held before the Board
of Oil, Gas and Mining in the above-entitled matter,
and said hearing was taken before Athena Moore,
a Certified Shorthand Reporter and Notary Public in
and for the State of Utah, holding Utah C.S.R. License
No. 88, commencing at the hour of 11:55 a.m. in the
Executive Conference Room, Holiday Inn, 1659 West North
Temple, Salt Lake City, Utah.

A P P E A R A N C E S

Charles R. Henderson, Chairman
Board of Oil, Gas & Mining

John L. Bell, Board Member
Thadis W. Box, Board Member
Edward T. Beck, Board Member
E. Steel McIntrye, Board Member
C. Ray Juvelin, Board Member

Cleon B. Feight, Director
Division of Oil, Gas & Mining

Denise Dragoo	Thalia R. Busby
Special Assistant	Administrative Secretary
Attorney General's Office	Division of Oil, Gas & Mining

Mike Thompson, Reclamation Engineer
Division of Oil, Gas & Mining

Thomas Joseph Suchoski, Reclamation Hydraulologist
Division of Oil, Gas & Mining

I N D E X

<u>Witness</u>	<u>Page</u>
THOMAS JOSEPH SUCHOSKI	3
WENDELL OWEN	6

E X H I B I T S

<u>Number</u>	<u>Page</u>
1-10	12
11	29

1 P R O C E E D I N G S

2 MR. CHAIRMAN: This is in the matter
3 of the violation of Chapter 8, Title 40, UCA, 1953,
4 and Rules MC-700 and M-3 of the Board of Oil, Gas
5 and Mining, by Co-op Mining Company, Bear Creek
6 Canyon, Portal, Emery County, Utah. This is Order
7 to Show Cause No. ACT/015/025.

8 Denise, would you like to proceed on
9 that?

10 MS. DRAGOO: Yes. By way of introduction
11 the Board of Oil, Gas & Mining has asked Mr. Wendell
12 to show cause today why his operation at the Bear
13 Creek Canyon Portal should not be abated for failure
14 to submit a notice of intention which is required
15 prior to mining. The violation was noticed by
16 Mike Thompson and Tom Suchoski on March 27, 1979,
17 when they went up to inspect the operation out there
18 and discovered that the operation had been ongoing
19 since the fall of the previous year.

20 So I guess at this time I would like either
21 Tom or Mike to come up and explain what they have
22 done at that time.

23 THOMAS JOSEPH SUCHOSKI,
24 called as a witness by and on behalf of the Division
25 of Oil, Gas & Mining, being first duly sworn, was

1 examined and testified as follows:

2 EXAMINATION

3 BY MS. DRAGOO:

4 Q Would you please state your full name
5 for the record?

6 A Thomas Joseph Suchoski.

7 Q What is your present employment?

8 A I work as a reclamation hydraulologist
9 for the State of Utah, Division of Oil, Gas &
10 Mining.

11 Q Were you present at the inspection
12 of the Bear Creek Portal site on March 27, 1979?

13 A I was.

14 Q Based on that, the staff would like
15 to present Tom Suchoski as an expert; will you
16 accept him?

17 MR. CHAIRMAN: We'll accept him. Go
18 ahead. Tom, if you speak up a little bit, we would
19 appreciate it. Go ahead.

20 THE WITNESS: Okay. On the 27th of
21 March, Mike Thompson and myself visited the Bear
22 Creek Canyon operation and we found that a road
23 approximately three-quarters of a mile in length
24 and approximately ten to fifteen feet wide had
25 been cut and a switchback type of road that came

1 up the canyon and swung back up to an area where
2 a face had been cut for access to coal for a portal
3 area. Previous to this no information had been
4 received that such an operation had been started.
5 I believe Mr. Owen dropped off plans for the Bear
6 Creek Canyon Portal and no mention had been made
7 that such an operation had commenced, and the
8 Division was just stopping by to get a general
9 idea of the area of what we were doing.

10 Q (By Ms. Dragoo) Okay. So we haven't
11 received as the date of your inspection, we had
12 not received any application for notice of intent
13 to mine, is that correct, or had an application?

14 A An application had been dropped off to
15 my understanding a week previous or so.

16 Q But it had not been approved?

17 A It had not been approved. It had not.
18 Basically it had not been reviewed except to acknowledge
19 it had been present or had been dropped off.

20 MR. CHAIRMAN: What do you mean by
21 "dropped off?"

22 THE WITNESS: Mr. Owen stopped by the
23 office and left a plan for the Bear Creek Canyon
24 Portal.

25 MR. CHAIRMAN: Okay.

1 MS. DRAGOO: I just might indicate for
2 the Board that Utah Code Annotated 40-8-13 requires
3 that a notice of intent, an approved notice of
4 intent be in existence prior to the commencement
5 of a mining operation. In this case, we didn't have
6 an approved mining plan, so that's the problem. That's
7 why Mr. Owen is here today.

8 Is that all that you have?

9 THE WITNESS: That's basically it. Just
10 that the area disturbed appeared to be slightly over
11 two acres when you take into account the road and
12 the path. We didn't run measurements or anything.
13 It was just from our observations.

14 MS. DRAGOO: I guess we will just turn
15 it over to Mr. Owen then.

16 MR. CHAIRMAN: You may go right ahead,
17 Mr. Owen. Just state your name into the record
18 and tell us what you have to say. We better have
19 him sworn.

20 WENDELL OWEN,
21 called as a witness by and on behalf of himself,
22 being first duly sworn, was examined and testified
23 as follows:

24 MR. OWEN: My name is Wendell Owen. My
25 address is 808 South 1800 West in Woods Cross, Utah.

1 I am one of the partners in the coal
2 mining company.

3 In answering this charge, I would like
4 to give a very brief sketch of the history of what
5 has taken place with the advent of these regula-
6 tions.

7 To start with, in our Trail Canyon
8 operation when I first became aware of the regula-
9 tions on my part of it, which I realized at that
10 time we were a little delinquent in, I, as fast as
11 I could, studied the regulations and prepared an
12 application.

13 Now in the process, I made several trips
14 into the Board--excuse me, not the Board, but the
15 Division of Oil, Gas & Mining, to find usually that
16 there is something that is more needed and also I
17 found that the ~~permanen~~t regulations had not been
18 received and there was even a little confusion at
19 times as to what would be required. At one time
20 there was a question that came up, and I asked the
21 man who was at that time their engineer with regards
22 to a certain point, and he said he didn't have time
23 to study that since the regulation came out. And
24 he wanted more time to answer it. What I am trying
25 to bring out is that as these temporary regulations

1 were brought out there were changes. Now as an
2 example, had we made the sedimentation pond at that
3 time according to the original specifications, it
4 would have not passed the permanent regulations.

5 I was finally told by the Division that
6 I'd better go ahead and get something done even
7 before the ^{permanent} regulations came out in order
8 that I could get a permit so I would not be in
9 jeopardy with the Federal, which we did. Now I
10 discussed verbally with the Division that we did
11 want to open another Portal in the Bear Canyon
12 area. But I didn't submit an application sooner
13 because we really didn't quite know what we wanted.
14 Just as soon as we received tentative approval in
15 the Trail Canyon, I made up an application, very
16 similar, for the Bear Canyon area assuming that we
17 had finally arrived at what we needed. When I
18 turned that into the Division, they handed me a
19 copy of the permanent regulations which they had
20 themselves just received within a period of two
21 or three weeks which included quite a lot more and
22 were quite a lot more stringent which we have since
23 redone the application and turned that in.

24 The reason I was trying to bring this
25 point out is to show why there was that much delay

1 in getting our final application. If anyone at
2 any time had been able to know for sure what we
3 needed, we certainly would have had it in sooner.

4 Now, as far as making a roadway on
5 up to the site of the mine portal, I would also like
6 to point out that this is an old existing mine. There
7 has been a mine there for a number of years. There
8 had been two different companies mine out of that
9 one mine opening.

10 Now, a road up there was necessary to
11 do some preliminary work to try to determine what
12 could be done. In other words, what we call finishing
13 up the seam. Now as far as the road up there, we
14 would have to have a road up there whether we mine
15 the area or whether we didn't. One of the reasons
16 is because there is an existing portal up there.
17 There is an existing portal there that has been
18 there for probably forty years, and according to
19 our regulations here, number 784-14 paragraph 14(d)
20 that mine should be sealed if it is not going to
21 be mined. Now, according to specifications for
22 sealing, there is no way that you can seal that
23 without some kind of access to that mine.

24 Now I'd like to further present to the
25 Board that this area that we are talking about--first

1 I would like to say that I have requested of the
2 Division that we take prompt action on this. Now
3 I recall being here last fall asking for additional
4 time in our Trail Canyon area because of the
5 weather. Now because of the weather in that area,
6 we are limited in the amount of time we can do
7 anything. At the time I first discussed it with
8 the Division, I made mention of the fact it would
9 be very good if there was any way we could possibly
10 just as soon as we got through with our compliance
11 of the regulations in the Trail Canyon area that
12 we could move right over and begin the same sedi-
13 mentation pond and the drainage system in the Bear
14 Canyon area so that we could get started. Because
15 what I can foresee is next winter we'll be up to
16 the same thing again in having to rely on weather
17 because of snow depth or one thing or the other
18 before we can do that.

19 Now this area that we are talking
20 about, like I say, is previously mined, and as I
21 understand the intent of this law and these regula-
22 tions is to protect the environment, and the sedi-
23 mentation pond and things of that nature to keep
24 your coal and suspended solids and various things
25 from entering the watershed.

1 Now I would like to have the Board look
2 at some of these photographs.

3 MS. DRAGOO: Are those going to be
4 exhibits?

5 MR. OWEN: Yes.

6 MS. DRAGOO: Could I look at them
7 briefly?

8 MR. OWEN: Yes.

9 MS. DRAGOO: Are they numbered or
10 anything?

11 MR. OWEN: No.

12 MS. DRAGOO: These are purported to
13 be pictures of the area?

14 MR. OWEN: Of the area that we have
15 submitted that we want to use as being determined
16 as the disturbed area. The point I'm trying to
17 make is this area, if the law, as I understand it,
18 is to protect the environment, this area has been
19 disturbed, has very much coal scattered around
20 the ground was used before and has waste piles;
21 everything that we purportedly are trying and
22 there is a law to avoid is already there. If we
23 could get prompt approval in a matter of a short
24 period of time, we could have that corrected. In
25 other words, what we are doing is trying to avoid

1 the very thing that supposedly we are going to
2 create.

3 MS. DRAGOO: So you want to submit
4 these exhibits; photo exhibits 1 - 10?

5 MR. OWEN: Yes.

6 MR. CHAIRMAN: Denise, could we just
7 go ahead and put a number on the back?

8 MS. DRAGOO: We can just put a number on
9 the back.

10 MR. OWEN: That would be fine.

11 (Whereupon Exhibits 1 through 10 were
12 marked for identification.)

13 MS. DRAGOO: Mr. Owen, I understand what
14 you are saying here, but I see the issue here in this
15 proceeding, there is really only one question, and
16 that is did you mine prior to having an approved
17 notice of intent to mine? If you did, that's a
18 violation of the Act, and if you didn't then, fine.
19 But I guess that's my question to you; when did
20 you commence mining, and if you did commence
21 mining, why was there no approved notice of
22 intent to mine?

23 MR. OWEN: My submission of this exhibit
24 and the point I have been making was I'll admit not
25 necessarily in answer to the charge, but more because

1 I desire to present to the Board the position we are
2 in and to a determination as to why that there is
3 a time involved and why the Division is holding
4 back approval when,, like I say, there is really
5 nothing much we can do with the area but improve
6 it.

7 Q (By Ms. Dragoo) But have you commenced
8 mining up there?

9 A (By Mr. Owen) No, we have not commenced
10 mining.

11 Q But you commenced road construction?

12 A We did make an access road up to the
13 old existing one, part of the way, part of the way
14 it's already made.

15 MR. BELL: Is this a new road or is
16 this just cleaning off the existing road?

17 THE WITNESS: Part of it was cleaning
18 out the existing road. We did extend it farther
19 than it was.

20 MS. DRAGOO: Tom, is an access road
21 considered mining under the Division rules and regu-
22 lations?

23 MR. SUCHOSKI: Under the regulation,
24 the Division has any construction or part of an
25 operation that would be used in a mining operation;

1 that is considered part of a mining operation.

2 MS. DRAGOO: So, in your understanding,
3 the access road construction would be considered
4 mining under the definition?

5 MR. SUCHOSKI: Yes, it would be
6 commencement of mining operations.

7 MR. CHAIRMAN: Denise, I'd like to ask
8 a question. You used the word, "new regulations,"
9 and I think he referred that they do have some
10 new regulations. Would you mind explaining what
11 you meant when you said "new regulations?"

12 MR. SUCHOSKI: The regulations that we
13 are operating under at the present time are what are
14 called the interim regulations for coal mining within
15 the State of Utah. The MC7 or 7-15 through 7-17 series
16 and the Division is under the present time promulgating
17 regulations or preparing to promulgate regulations under
18 what we call the final program or permanent program
19 dealing with the final regulations. Those would
20 be 8-15 through 8-17 series of regulations on per-
21 formance of standards.

22 MR. CHAIRMAN: So in other words, when
23 you are saying "new regulations"--let me ask you
24 first when these new regulations go into effect?

25 MS. DRAGOO: Upon approval by the Board.

1 MR. CHAIRMAN: I know, but when?

2 MS. DRAGOO: Probably next month.

3 MR. THOMPSON: The new regulations
4 will be proposed this June in this Board meeting.

5 MR. CHAIRMAN: Well what regulations
6 are we holding him responsible for, Mr. Owen
7 responsible for. You said we are holding him
8 under the "new regulations."

9 MR. THOMPSON: The 1975 Mined Land
10 Reclamation Act.

11 MR. CHAIRMAN: For the present regula-
12 tions, not the new regulations?

13 MR. THOMPSON: Right

14 MR. MCINTYRE: Mr. Chairman, I think
15 we are spending a lot of time. The man is operating--
16 it should be the position of the Board to try and
17 help him out not to hinder him, and I suggest if he
18 is probably finished his testimony to take this under
19 consideration, maybe off the record I can ask him
20 what we can do to get this thing over with and get
21 him back in good standing.

22 MR. BOX: I think we need to ask the
23 staff what their recommendations are. The Board
24 cannot undermine our staff.

25 MR. FEIGHT: I have something to say

1 that might resolve this on the record.

2 MR. CHAIRMAN: Go ahead, Jack.

3 MR. FEIGHT: Mr. Owen, you're appearing
4 today here on an Order to Show Cause before the
5 Board, do you have any objection if they issue you
6 an abatement or a compliance order that is against
7 you stating that you will not carry on any further
8 mining operations until you have submitted a plan;
9 do you have any objections to this? That is until
10 you've submitted your mining plan?

11 MR. OWEN: I would like to say in the
12 first place I have submitted a plan, and in the
13 second place, what do you call an abatement or a
14 compliance order? COTTON CEMENT

15 MR. FEIGHT: In other words, what the
16 staff is asking that you don't do any further work
17 out there on the mine, whether to developing a new
18 mining operation, until you have an approved notice
19 of intention to commence mining operations.

20 MR. OWEN: I don't see any objection
21 to that, but I would like to if necessary, to
22 bring that about further and present the case as
23 to why I'm not receiving an approval.

24 MR. FEIGHT: That is not at issue.
25 That is something they can explain to the Board.

1 My question to you is, do you see any problem of
2 not going any further with this road until you
3 have received approval of your notice of intention
4 to commence mining?

5 MR. OWEN: I don't see any problem except-
6 ing in the matter that I put out before and the matter
7 of time that it is taking because it won't be very
8 long before it will be too late to do it this year.

9 MR. FEIGHT: In other words, if you are
10 delayed much longer, the weather is going to prevent
11 you from doing anything?

12 MR. OWEN: Yes. It's important for us
13 to get it done this year in our mining operation in
14 Trail Canyon. We have found that the farther north
15 we go with our seam, the lower it becomes and the
16 more problems we have. We are down on our production.
17 We are not able to supply our commitments as we
18 should. It's very important to our operation and
19 the survival of our mining company to get this
20 operating.

21 MR. FEIGHT: I think what the Board needs
22 to do is even though this is not at issue, is to
23 explain what their problems are with this notice
24 of intention to commence mining.

25 MS. DRAGOO: Tom, will you explain this?

✓ 1 MR. SUCHOSKI: Mr. Owen, in my memo
2 it states that on the 14th of March he submitted a
3 mining and reclamation plan and an application to
4 the Division and stating that he would or that he
5 proposed to start a mining operation in Bear Creek
6 Canyon. The plans were reviewed and there were
7 some materials that were missing; the one dealing
8 with the map of the area that showed adequate
9 detail, detail of the sediment pond design and
10 methods of construction, and certain other deals
11 with vegetation and wildlife. Mr. Owen stated
12 that he would bring those into the Division and
13 supply them. As to this date, I don't know
14 whether they have been received or whatever.

✓ 15 MR. FEIGHT: Mr. Suchoski, what you're
16 telling the Board is that Mr. Owen has not submitted
17 to you the necessary detailed engineering plans
18 for the sediment pond and the other information
19 that you require in order to approve his notice of
20 intention to commence mining, am I correct?

✓ 21 MR. SUCHOSKI: Yes, that's correct.

22 MR. FEIGHT: He submitted a bond?

✓ 23 MR. SUCHOSKI: No, he has not submitted
24 a bond for Bear Creek Canyon.

25 MR. FEIGHT: For the Board to consider,

1 and these are the elements that are holding up
2 the approval?

3 MR. OWEN: I would like to state I did
4 submit a detailed plan for the sedimentation pond,
5 and the thing that I was lacking was a vegetation
6 study by the Forest Service and when you deal with
7 different agencies there is time involved, and I
8 had recently put together and submitted it and
9 which, indidentally, showed along this same line
10 that area was not--in other words, it falls in the
11 categories of 7 and 8 for Forest Service range land
12 categories. Eight is entirely devoid of vegetation;
13 seven is considered unsuitable and not able to support
14 either stock or large game, but I am trying again to
15 point out that it seems like to me that we are taking
16 here four or five acres of ground that has previously
17 been disturbed in an area that is not good for anything
18 but coal mining and making quite an issue out of it.
19 We have a stream of water running by it and it is
20 perpetually muddy and does not pass government fluid
21 standards just as it comes on the property that we are
22 trying to protect. The whole idea is that if we would
23 be allowed to continue that we could do more good
24 and leave it a lot better than it is. I feel we are
25 being held up on details. In other words, like a

1 study of the vegetation in the area. They asked
2 for a soil survey which I requested from the soil
3 conservation people, but those things move slowly,
4 too. A soil survey in that area is going to have to
5 show predominantly coal because that is what's laying
6 on the ground.

7 I feel like I have tried and have made
8 a record of trying to submit whatever the Division
9 has asked for and tried to cooperate in anything.
10 I don't feel like that there is involved here a
11 matter of whether we are trying to comply with the
12 law or not. I feel we are. I feel the matter is
13 a lot of details as far as furnishing information
14 which I am trying to get, but like I say it's an
15 area that already has the things wrong with it
16 which we are trying to avoid.

17 MS. DRAGOO: Mr. Owen, do you think you
18 could get together with the Division's staff and
19 find out what details they feel they need to be
20 submitted in order to complete your application,
21 and during that time between now and until you can
22 get a complete application and an approved applica-
23 tion, would you agree just not to commence any more
24 mining activities?

25 MR. OWEN: Yes.

1 MR. BECK: Denise, what does he really
2 need now to get an approval? He says that he has
3 his map in.

4 MS. DRAGOO: He hasn't submitted a complete
5 application in the eyes of the Division.

6 MR. BOX: Tom, have you or has anybody
7 told him what he needs to do to complete his
8 application?

✓ 9 MR. SUCHOSKI: When we first met with
10 Mr. Owen, we mentioned the things that we saw were
11 lacking in the plan. We had not at that time done
12 a completed review or completed a review of the
13 plan, but just looking through it we noticed
14 several things that were missing, and the re-
15 submitted plan that Mr. Owen says he has submitted
16 is now in the routing process throughout the
17 Division, and we are working towards coming up
18 with a statement saying that this is what we feel
19 is complete; this is what we feel is needed.

20 MR. BECK: So really, the plan is in your
21 hands now awaiting for your approval?

22 MR. SUCHOSKI: We are doing a review of
23 the plan.

24 MR. BECK: How long is this going to take?

25 MR. SUCHOSKI: It should be finished before

1 the end of this next week. We have been working
2 on promulgating our coal regulations and taking
3 care of many of the problems in that area. There
4 is a deadline that we had to set upon which we
5 needed to get it finished, and I believe it is
6 in the routing process, and usually that takes
7 about a week or two weeks to complete.

8 MR. BECK: Would there be any problem
9 if Mr. Owen came in the first part of next week
10 and you sat down with him and reviewed his plan
11 and went over it with him and showed him what
12 was necessary to get approval?

13 MR. SUCHOSKI: I don't believe there
14 will be any problem with that.

15 MR. JUVELIN: Mr. Owen, I presume your
16 company is a rather small one?

17 MR. OWEN: Yes, that's true.

18 MR. JUVELIN: And you do not have a
19 complete engineering department or the facilities
20 to do the studies you need yourselves?

21 MR. OWEN: No. I am very pleased with
22 the Division as far as taking into consideration
23 those things. A lot of those things in our report as
24 far as geology and things of that nature are taken
25 directly from the records and things that are

1 available with the state already, and they have
2 indicated that they were acceptable. I appreciated
3 that. We do not have our own people on our staff.

4 MR. JUVELIN: Would it be possible to
5 give Mr. Owen some assistance in getting the plant
6 study completed; is there any way we can assist him
7 in his request in the soil conservation survey if
8 that is going to be a hangup? In this area, if they
9 can't get something done within the next month or
10 so they are not going to get much done this year.
11 Once they get into September, certainly the middle
12 of September it's almost too late for them to start.
13 He's got two months from now, really, to get something
14 done. If we hold him up for another month, I don't
15 think we are being fair to Mr. Owen or his company.

16 MR. DANIELS: Yes. We can attempt to
17 get the soil survey expedited. I think a lot of the
18 things that have been submitted so far are lacking
19 in some of the fine points of detail that you would
20 just expect to see on some plans. An example of it
21 is a label saying what it is; who drew it; who do you
22 talk to to ask the questions about it? It may be
23 stamped by a professional geologist but it doesn't
24 say when it was drawn and has nothing else on it.
25 Another thing is we asked for a map of the surface

1 facilities and a map of the contours on the same
2 drawing and it's pretty difficult to make any
3 evaluation if you don't have it on the same scale
4 and on the same map to look at the slopes and where
5 the things are located. I think that's one of the
6 other points that has been made. There is a contour
7 map and there is a surface facility map, however,
8 they need to be melted together. There are a lot
9 of small points.

10 MR. BOX: I want to comment on Ray's
11 comment. I'm not sure what you're asking the
12 staff to do, but I think we should do everything
13 we can do to facilitate Mr. Owen, but as far as
14 supplying data or surveys or information, we simply
15 don't have the staff, and there are plenty of con-
16 sulting companies that can do this.

17 MR. JUVELIN: I was not suggesting that
18 the staff do this. I was suggesting that we might
19 be able to assist Mr. Owen in his request to the
20 Soil Conservation Service for expediting of the
21 work that they've already said they would do.
22 No, I'm not suggesting that our staff be asked to
23 do this kind of work. I realize that they don't
24 have the time for it.

25 MR. FEIGHT: In time we might be able to

1 get a couple of more inspectors to help do biological
2 studies. If I might, to expedite this, I would like
3 to make a recommendation to the Board, and I don't
4 think Mr. Owen would object to this. He may object
5 after I made the statement that if we do issue an
6 abatement and compliance order at this time by the
7 Board for at least this month and then Mr. Owen
8 can get together with the staff and try to present
9 to the Board and the staff next month what he has
10 submitted and find those areas that we are lacking
11 so that we can get this matter on its way. Do
12 you have any objection to that?

13 MR. OWEN: I would like to voice this
14 opinion. I think he refers to another month which
15 is enough to make it so that we can't get it done.
16 Now, the point I'm trying to make is since we've
17 tried to comply in our previous dealings; we've
18 tried to furnish the things that they have asked
19 for and obviously the thing that is in question is
20 some of these details, and it is not as to whether
21 the environment is going to be hurt; it's not as
22 to whether--in other words, such things as the soil
23 survey and these things are fine, but from all indi-
24 cations and observations, even photographs show it
25 extremely rocky soil and it can't be used for

1 anything else. What I'm trying to say is why is
2 it that the Board can't give us a tentative
3 approval and not produce abatement while we continue
4 to get these details gathered together?

5 MR. FEIGHT: Mr. Owen, we are strapped
6 with Public Law 95-87, and these requirements are
7 within this law. I don't think the staff or the
8 Board can go outside of the requirements. I would
9 like to ask you one further question, have you hired
10 any consulting personnel to help you with this?

11 MR. OWEN: I was advised by the Board
12 when they first handed me the permanent regulations
13 that there was a consulting firm that takes care
14 of those things for you, and they told me that they
15 knew the cost of that was \$200,000. We don't have
16 that kind of money to spend.

17 MR. FEIGHT: I can't conceive hiring
18 a biologist would cost you \$200,000, Mr. Owen, to
19 make a study.

20 MR. OWEN: That was the figure that
21 they told me.

22 MR. BELL: Mr. Owen, just exactly what
23 would interfere with the overall development if you
24 lost one week of work, for example, if you were
25 to get this little detail work done? Some of this

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1 can be done on the basis that you will commit your-
2 self. You are forgetting the fact that this study
3 doesn't necessarily have to be completed because
4 you may have a plot of land that you want to fence
5 off and develop vegetation to be determined at a
6 later date. It's a matter of you committing yourself
7 that you will do these things so that they know that
8 they are going to be done and the fact that you will
9 bond yourself that you will do them. What you're doing
10 is being evasive. Just exactly what would happen if
11 you were not permitted to do your excavating and
12 this sort of thing for a week?

13 MR. OWEN: You mentioned a week. And
14 the gentlemen here just mentioned a month, and in
15 the meeting before the Board next month. I don't
16 think a week would hurt us, but I do think waiting
17 until the next Board meeting next month would hurt us.

18 MR. BELL: We can give approval to the
19 Board that if you submit these things to their
20 satisfaction they can give you tentative approval.

21 MR. OWEN: Yes, I don't believe a week
22 would hurt us.

23 MR. BELL: The question is that the Board
24 is stuck with the law that you have to do certain
25 things to be in compliance. I know the Board here

1 wants to see you move and I know we would be in
2 agreement to make it possible for the Division
3 to work with you and give you this kind of approval
4 if you meet with what they need in that period of
5 time. If you haven't got an engineering study, then
6 you're stuck with OSM because they require more detail.
7 That's what we're stuck with. They don't have the
8 plans to show that this is what you're going to do.

9 MR. OWEN: We do have engineers' drawings
10 and specifications on our sedimentation pond and the
11 whole thing. Like I say, the thing that is involved
12 as Ron himself pointed out, is a matter of details
13 here and there that is something isn't quite right.
14 We haven't had an engineer to set up the specifica-
15 tions on our sedimentation pond.

16 MR. BELL: I guess you are going to get
17 down to the point of whether the cost of delay and
18 that is worth the expense of getting an engineer to
19 assist you in dollars and cents. I think you're going
20 to get to those points all the way down the line.
21 Would it be better to get a professional to come and
22 help you for a few days or getting stuck with delays
23 because you don't get in compliance with the detail
24 work. That's what you have to decide. You can go
25 on and on and on and you're not going to get your

1 job done.

2 MR. FEIGHT: Mr. Chairman, I would
3 like to go off the record for a minute.

4 MR. CHAIRMAN: All right. We'll go
5 off the record for a few minutes.

6 (Whereupon an off the record discussion
7 was had.)

8 MR. CHAIRMAN: Are we ready to go back
9 on record, gentlemen?

10 MR. JUVELIN: Yes. I would like to move
11 that we impose a 30 day abatement with the proviso
12 that if Mr. Owen can satisfy the staff and the law
13 prior to the 30 day period that he be permitted to
14 commence mining prior to our next Board meeting, other-
15 wise he will appear before the Board for the Board's
16 approval or for an exception at that time.

17 MR. OWEN: Before the hearing is closed,
18 I would like to submit another exhibit.

19 MR. BOX: First, let me second the
20 motion.

21 MR. OWEN: This will be Exhibit 11.
22 It is the rainfall depth. The impression seemed to
23 be left that we had not had any engineering done
24 and didn't get any professional help which we did.
25 Now it was brought out also that one of the reasons

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COP 111 CONTENT

1 for this is that it is Federal law, and I would
2 like to read here from Rule No. 700.4, paragraph
3 c, the States are responsible for the regulation
4 of surface coal mining and reclamation operations
5 under the initial regulatory program and surface
6 coal mining and the reclamation operations and
7 coal exploration under an approved state program
8 and the reclamation of an abandoned mined land
9 under an approved state program and non-Federal
10 and non-Indian lands in accordance with the pro-
11 cedures which are in this chapter, and as you
12 know, we are on Federal land and we have until
13 July 1980 to get into compliance and we are working
14 toward that now. This means that the Federal wouldn't
15 have any jurisdiction until that time.

16 MR. FEIGHT: They have jurisdiction as
17 a result of Public Law 95-87. That applies to all
18 state and fee acreage now.

19 MS. DRAGOO: I think we will stipulate
20 to the fact that we have jurisdiction.

21 MR. FEIGHT: Yes, we will.

22 MR. CHAIRMAN: Thank you, Mr. Owen.
23 Now there is a motion before the Board. Does anyone
24 else want to address it before we make our decision?

25 MR. FEIGHT: Yes. We do have that 30

1 day publication requirement but I'm not sure we can
2 authorize him to commence operations without that 30-
3 day qualification.

4 MR. BOX: I believe that was in Ray's
5 motion. He said satisfy you and the law. If the
6 law says it has to have public participation, then
7 there's nothing we can do.

8 MR. CHAIRMAN: Is that the very best
9 we can do for him?

10 MR. FEIGHT: We have gone to our limit.
11 I can't conceive how we can do it any other way.
12 If he can come up with a bonding requirement and
13 the Board can check that out next month and publish
14 it and you can prove the bonding and then he's on
15 his way.

16 MR. McINTYRE: Are we going to get into
17 trouble about the bonding?

18 MR. OWEN: No. If it's reasonable and
19 similar to the bonding on the other property, which
20 it should be because it's about the same size acreage
21 or less, if anything, if it's within reason, there's
22 no problem there.

23 MR. FEIGHT: I know we'll have to decide
24 the bond, too. I think we can be pretty reasonable.
25 As Mr. Owen pointed out the land is not the best land

in the world. I don't think it's suitable for farming or grazing. I believe the bond could be kept at a minimum.

MR. CHAIRMAN: Denise, do you think that's the best we can do as far as your office is concerned?

MS. DRAGOO: I think it would be a violation to continue mining in the absence of an approved notice of intent to mine. So I think the abatement order is the minimum that we can do.

MR. BECK: Could I ask a question, Denise?

MS. DRAGOO: Yes.

MR. BECK: Supposing there was work to be done on the road up as far as the abandoned mine just to open the road; now there is no mining being done and it's an old road and an abandoned mine, what would be considered mining as far as keeping that road open?

MS. DRAGOO: As I understand the maintenance of the road is mining.

MR. FEIGHT: Building the road is mining under the Act.

MR. BECK: It's already there, Jack. It's a matter of cleaning.

1 MR. OWEN: It's already been done.

2 MR. BECK: Supposing it has to be done
3 again.

4 MR. THOMPSON: That would be considered
5 as a mining operation. Anything that is done on
6 that permanent property in the future will be or
7 at the present is being used for mining operation,
8 is considered mining.

9 MR. OWEN: Does that include barricading
10 and closing an old mine from transporting materials
11 to that opening and so on?

12 MR. BELL: Is there any provision in the
13 Act that we are talking about now that says that
14 if they are going in to find out whether they want
15 to put a mine in there and they may never put one
16 and they may do a little preliminary excavation or
17 a study before this is determined; is there any
18 provision for them to do this without going through
19 all the submitting of everything, if nothing's going
20 to be disturbed?

21 MR. DANIELS: There is under exploration
22 if it's less than two acres.

23 MR. BELL: Why couldn't we act under
24 the exploration act until we can determine what to
25 do?

1 MR. THOMPSON: Exploration would have
2 to be explained at the end of the operations. It
3 would have to be specified for removal of X amount
4 of coal to get to a certain purpose, i.e. testing
5 and that would have to be worked out and cleaned
6 out afterwards.

7 MR. FEIGHT: I think if Mr. Owen was
8 simply going up to close that mine, I don't think
9 he would be covered. I don't think the Act con-
10 templates that. I think it would be a legitimate
11 operation to go in and build a road and close that
12 mine shaft for the portal, and I don't think any-
13 body could consider that as a commencement of
14 mining operations. But if he intends to go in and
15 get into that portal and mine, then I think it probably
16 covers that. If he's not going to move over 500 times
17 a year or not going to disturb over two and a half
18 acres under our Act, the original Act is not cut.
19 Now, Denise can tell me whether she thinks under
20 the Public Law 95-87 statement of the Act is covered,
21 but I think if they left it two and a half acres,
22 it would be all right. I would say to Mr. Owen that
23 he should not now be here before the Board if all
24 he is going to do is go up and close that shaft.
25 That certainly is not commencement of mining

MEMORANDUM

1 operations. Is that what you intended to do?

2 MR. OWEN: No.

3 MR. FEIGHT: You did intend to mine?

4 MR. OWEN: We did intend to check the
5 feasibility of opening a mine, yes.

6 MR. CHAIRMAN: Now is the feasibility
7 of opening a mine, is that mining or is that
8 exploration?

9 MR. FEIGHT: It should be exploration.

10 MR. BELL: This is my point. If all of
11 the study needs to be in at this point in time,
12 could we determine what might be able to be done
13 and then he could do some things that would break
14 the Act and at the same time get the rest of the
15 study in.

16 MS. DRAGOO: There are application re-
17 quirements for exploration.

18 MR. BELL: That seems to be the thing
19 that we're hung up on.

20 MR. FEIGHT: I might make another recom-
21 mendation to the Board on this basis that if Denise
22 after looking the law over determines that this
23 particular project does not necessarily cover; that
24 the abatement order not apply to him going up to that
25 mine and checking the feasibility and pulling out.

1 That is something that I think we should have Denise
2 look into.

3 MR. JUVELIN: That covers it with the
4 motion.

5 MR. CHAIRMAN: I think we ought to just
6 vote on it. All in favor say aye.

7 (Aye)

8 Those opposed say no.

9 (No response)

10 So carried.

11 Mr. Owen, we know you are in a tough
12 spot, but I'm sure that we'll help you.

13 (Whereupon the hearing concluded.)
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C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, ATHENA MOORE, do hereby certify that
I am a Certified Shorthand Reporter and Notary Public
in and for the State of Utah; that as such reporter
I attended the above-entitled matter and thereat
reported in Stenotype all the testimony, evidence and
proceedings had therein; that thereafter I caused to
be transcribed my said stenographic notes into type-
writing, and the foregoing constitutes a full, true
and correct transcription of the same, to the best of
my ability.

DATED at Salt Lake City, Utah, this 26
day of July, 1979.

Athena Moore
ATHENA MOORE
Certified Shorthand Reporter
License No. 88

My Commission Expires:

7/1/81